

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In re Petition of

THE ARIZONA CORPORATION COMMISSION

To Extend State Authority Over Rate and Entry  
Regulation of All Commercial Mobile Radio Services

PR Docket No. 94-104

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To: The Commission

**REPLY COMMENTS OF CENTURY CELLUNET, INC.**

Century Cellunet, Inc. ("Century") hereby submits its reply to oppositions and comments filed on the above-captioned petition of the Arizona Corporation Commission ("Arizona"). The Arizona petition to retain regulatory authority over rates for, and entry into, the provision of Commercial Mobile Radio Services ("CMRS") within the state of Arizona was broadly opposed by virtually all sectors of the CMRS industry. As these carriers document, Arizona has failed to provide any relevant evidence to support continued regulation under Section 332(c)(3)(A) of the Communications Act, as amended. Accordingly, Century requests the Commission to deny the petition forthwith and, consistent with Congressional intent, to foster development of a fully competitive CMRS marketplace.

In its original comments in this docket, Century opposed the Arizona petition on the grounds that the petition illegitimately seeks to continue regulation of *entry* into CMRS and that the petition does not make the threshold burden of proof necessary to support an FCC order allowing continued regulation. These comments were echoed by all aspects of the

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CMRS industry, including paging carriers,<sup>1</sup> narrowband PCS interests,<sup>2</sup> Specialized Mobile Radio service providers,<sup>3</sup> mobile satellite service providers,<sup>4</sup> mobile trade associations,<sup>5</sup> and cellular carriers.<sup>6</sup> Only the National Cellular Resellers Association took a position in contrast to the position of these commenters.<sup>7</sup> As the oppositions make clear, the Arizona petition is "fundamentally misleading,"<sup>8</sup> "contains numerous misstatements of material

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<sup>1</sup> See Comments of Paging Network, Inc. at 3-6.

<sup>2</sup> See, e.g., Comments of Mobile Telecommunication Technologies Corp. at 3-6.

<sup>3</sup> See Comments of E.F. Johnson Corp. at 5; Comments of Nextel at 14-16; Comments of Pittencrief Communications at 2-6.

<sup>4</sup> See Comments of American Mobile Satellite Corporation at 4-7.

<sup>5</sup> See Comments of the American Mobile Telecommunications Association at 4-7; Comments of the Personal Communications Industry Association ["PCIA"] at 11-15.

<sup>6</sup> See Opposition of Bell Atlantic Metro Mobile Companies ["Bell Atlantic"] at 5-26; Opposition of GTE Service Corporation ["GTE"] at 3-5, 12-23; Opposition of Mohave Cellular Limited Partnership ["Mohave"] at 13-20; U S West NewVector ["NewVector"] Opposition at 2-5.

<sup>7</sup> Comments of the National Cellular Resellers Association ["NCRA"]. Given that Arizona regulates only the provision of wholesale cellular rates, NCRA's members' pecuniary interest in continued regulation is evident. However, the proper Congressional inquiry is not whether resale carriers would be harmed in the absence of rate regulation, but whether consumers, i.e., end-users, would be harmed.

<sup>8</sup> Mohave at 1.

fact,"<sup>9</sup> "discusses irrelevant issues and makes incorrect claims,"<sup>10</sup> and "should be quickly rejected."<sup>11</sup>

As an initial matter, the comments show that the Arizona petition is wholly at odds with Congressional intent.<sup>12</sup> Instead of fostering competition by ensuring that "similar services are accorded similar regulatory treatment,"<sup>13</sup> Arizona seeks to perpetuate a "flatly asymmetrical regulatory scheme"<sup>14</sup> that discriminates both between cellular radio services and other CMRS offerings and between wholesale and retail cellular services. Thus, Arizona is seeking to continue "precisely the sort of uneven regulatory structure that Congress wanted preempted."<sup>15</sup>

In addition, commenters demonstrate that Arizona "did not even meet its burden of producing evidence which puts in issue whether market conditions in Arizona justify state rate regulation," and thus "[t]he FCC . . . need not even reach the issue of whether the ACC met its required 'burden of proof.'"<sup>16</sup> Indeed, as Bell Atlantic's economic testimony aptly

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<sup>9</sup> NewVector at 2.

<sup>10</sup> Bell Atlantic at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Bell Atlantic at 7-10; GTE at 3-5; NewVector at 11-12.

<sup>13</sup> Bell Atlantic at 8 (citing H. Conf. Rep. No. 103-213 at 494).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 12.

observes, Arizona's scheme of *wholesale* -- rather than *retail* -- rate regulation "does not protect end users from high rates."<sup>17</sup> Furthermore, Arizona's argument that it explicitly rejected deregulation of cellular service refers to a five year old decision relating to Phoenix and Tucson, "the only areas with service at the time of the decision."<sup>18</sup> Thus, the Arizona petition is limited to unsupported assertions of a vague "potential" for harm to customers.<sup>19</sup>

The comments, in fact, illustrate that cellular service in Arizona *is* competitive.<sup>20</sup> As Mohave notes, "[i]n 11 years of 'regulation,' the ACC has received one formal complaint against a cellular carrier, which was dismissed for lack of prosecution."<sup>21</sup> NewVector, for its part, observes that "the evidence is that cellular rates in Arizona -- at both the wholesale and retail level -- have been declining, a fact the ACC does not challenge."<sup>22</sup> Bell Atlantic also notes that "[f]orty-six companies are licensed to provide paging, and 78 companies to provide SMR service [in Arizona]."<sup>23</sup>

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> Mohave at 2.

<sup>19</sup> *See, e.g.*, NewVector at 15.

<sup>20</sup> *See, e.g.*, GTE at 15-16; Mohave at 6-8; NewVector at 6-9.

<sup>21</sup> Mohave at 2.

<sup>22</sup> NewVector at 14.

<sup>23</sup> Bell Atlantic at 21.

Finally, commenters have noted that the Arizona petition fails to provide any detail as to the regulations it seeks to have continued.<sup>24</sup> In the absence of "a full understanding of [Arizona's] proposed rules, . . . [t]he Commission cannot evaluate whether [Arizona's] regulatory regime is drawn narrowly enough to serve the specific purpose of protecting consumers from unjust or unreasonable rates."<sup>25</sup> This is especially true in light of showings in the comments that Arizona's particular requirements have in fact affirmatively impeded the ability of companies to compete in the markets Arizona labels noncompetitive.<sup>26</sup>

In view of these circumstances, Arizona's petition should be summarily rejected. The commenters have shown that, in addition to a number of other fatal defects,<sup>27</sup> the petition fails to provide the substantive showings that would support continued rate regulation.

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<sup>24</sup> Bell Atlantic at 14-15; Mohave at 10-13; NewVector at 17-19; PCIA at 15-16.

<sup>25</sup> Bell Atlantic at 14.

<sup>26</sup> See, e.g., Bell Atlantic at 21-23; NewVector at 8-9. As discussed in these petitions, the AZ-1 and AZ-2 RSAs are both licensed to carriers by the FCC; the only impediments to the offering of service in these markets (and thus the root of Arizona's claim that these markets are "monopolies") are attributable to the onerous regulations Arizona seeks to perpetuate.

<sup>27</sup> See, e.g., Bell Atlantic at 13-14 (noting that the Arizona petition was not filed by the proper authority under Section 332); see also Bell Atlantic at 16-20; Mohave at 15-16 (noting that Arizona's arguments that cellular is a basic exchange service do not even approach the level warranting consideration under the standards of Section 332).

Accordingly, the FCC should act rapidly to deny the petition and bring consumers in Arizona the full benefits of CMRS competition on a level regulatory playing field.

Respectfully submitted,

CENTURY CELLUNET, INC.

By: W. Bruce Hanks  
W. Bruce Hanks, President  
CENTURY CELLUNET, INC.  
100 Century Park Drive  
Monroe, Louisiana 71203  
(318) 325-3600

Dated: October 4, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 1994,  
I caused copies of the foregoing "Reply Comments of Century  
Cellunet, Inc.", to be mailed via first-class postage prepaid  
mail to the following:

Elizabeth A. Kushibab, Esq  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

  
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Kim R. Riddick